

Written Testimony HB 1388

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Opposed UNF

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**LATE
TESTIMONY**

Thank you for accepting my testimony in opposition of HB 1388. I am a St. Mary's County resident, a principal in a Charles County, Maryland, dental practice and a multiple horse and other animal owner as well as a user of a wide range of veterinary services.

Before providing the reasons I am speaking against this legislation, I would like to note that it is unclear what the impetus is for creating this legislation. The record does not reveal why there is urgency and a public sector need for this Bill.

I believe that Employer/Employee Agreements and the well-established reasonable non-compete provisions that have been utilized for higher wage earners, such as licensed health care and veterinary professionals, generally have allowed for increased understanding of employment expectations by both employers and employees and have lead to small business expansion in Maryland.

Expansion of the provisions of the current Maryland law regarding non-complete and conflict of interest for selected licensed health and veterinary employment contracts, as well as to apply them retroactively, would have a significant negative impact on service availability and create an undue burden for the enterprises and businesses targeted by this Bill.

As noted in the Fiscal and Policy Note for this Bill, the small business effect is meaningful. Without full research of the unintended and irreversible

consequences adding certain licensed groups to a current law, which specifically defines a lower wage earner category may not achieve the intended results.

It should be noted that the U.S. Government Accountability Office (GAO) Non-Compete Agreements (NCA) report referenced in the Fiscal and Policy Note does not address why the GAO did the reference study. It states that “questions have been raised about employers’ use of NCA’s and their effect on lower-wage workers who may not have access to protected propriety information.” Maryland has already addressed this in the current law regarding specific wage earners.

Also, not addressed in the Fiscal and Policy Note is the potential for increased burden on State License Boards as this Bill affects only Licensed professionals and legal experts who would be required to determine the legal impact for both employers and employees.

This leads me to ask why HB1388 would necessitate urgency to add certain health care and veterinary professionals to the current law and apply this Bill retroactively. It is my opinion that expansion of the current law, with such a select group, does not address or further public policy or the broader protective, remedial, or evolving matters that inspire legislatures to act. It appears that the intention of this Bill is to restrict such provisions in NCAs as “against the public policy of the State” retroactively.

I would suggest that this Bill as written would decrease small business expansion, result in less service hours and service areas, as well as the availability of service and specialty services. In order for Section B (2) of the Bill to be applied, practices would need to prepare revised agreements with employees regarding the taking or use of client lists or other proprietary client-related information. Without the opportunity for businesses to ensure agreements are sufficient regarding database, legal constructs and client-related information would result in unnecessary risks and costs.

The value of a health care practice is based on client relationships, consistency standards and tangible property. Applying a retroactive law would nullify all the protective measures in previously established and executed standing agreements

not written according to this Bill. It would inequitably focus on certain Maryland health providers and impact value.

Other points to consider are the reasons that NCAs are important to small businesses such as those that would be restricted by this Bill. These encompass financial and time investment to continue or expand services that are needed by the community. In many cases, this involves increased job opportunities for a wide range of professionals as well as support and non- licensed staff, tax revenue, additional space, supplies etc. that add to the state's economy and multi- faceted business environments. The value of a health care practice is indispensable to Maryland tax base, individuals, families, financial security, business owners and ethics.

Please consider the incredible responsibilities, contributions and the significant increase of operational costs borne by employers in providing continuity of service during the global pandemic and the post pandemic era in considering the timing of this Bill.

Also of note is the Federal Trade Commission (FTC) consideration of NCAs which should reach a conclusion sometime this year and make this process and the cost of implementation of the Bill highly unnecessary.

Thank you for your time in considering all aspects of this Bill and the potential negative impact on the State. Should you decide that it is in the interest of the state to look at prohibiting NCAs, I would encourage the legislative body to decide this issue with transparency and with a certain and equitable examination that includes all businesses. This will ensure that protections for both employers and employees can be fully assessed and thoroughly understood.